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IN THE
COURT OF APPEALS OF INDIANA

RICKY A. CONN,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 24A04-0610-CR-592
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE FRANKLIN CIRCUIT COURT
The Honorable J. Steven Cox, Judge
Cause No. 24C01-0306-FA-312

June 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Ricky A. Conn appeals his convictions for dealing in a narcotic drug[1] as a Class A felony; possession of a narcotic drug[2] as a Class D felony; possession of paraphernalia[3] as a Class A misdemeanor; and unlawful use of a police radio[4] as a Class B misdemeanor. He raises the following two restated issues:

I. Whether the trial court erred in admitting evidence; and

II. Whether there is sufficient evidence to support his conviction of dealing in a narcotic drug as a Class A felony.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 6, 2003, as Conn drove his car through an intersection, Indiana State Trooper Timothy Wuestefeld observed that he and his front seat passenger, Nick Calhoun, were not wearing seatbelts. Trooper Wuestefeld stopped Conn's vehicle and approached it. He noticed a second passenger, Sue Rehfues, lying down in the back seat. Both Conn and Calhoun refused to look at the trooper and acted as if he was not there.

When Trooper Wuestefeld asked Conn for his driver's license and registration, Calhoun placed his hand between the console and the passenger's seat. Because of a concern for his safety, the trooper ordered all of the vehicle's occupants to place their hands up where he could see them. All of the occupants complied, and Conn told the trooper that he did not have a driver's license.

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[1] *See* IC 35-48-4-1.

[2] *See* IC 35-48-4-6.

[3] *See* IC 35-48-4-8.3.

Trooper Wuestefeld observed an empty pen barrel with black residue in the front center ashtray. Based upon his training and experience, the trooper identified the pen barrel as an instrument used to smoke methamphetamine or cocaine. When he noticed that Calhoun was reaching under his seat as if he was either hiding something or reaching for a gun, Trooper Wuestefeld called for backup and ordered all three occupants out of the car. When the other officers arrived, Trooper Wuestefeld took Conn to the trooper's vehicle to issue him a citation for driving without a license. The trooper noticed a strong chemical odor emanating from Conn.

During a search of Conn's vehicle, the trooper found 1.88 total grams of methamphetamine in three separate bags in the center console and 32.27 grams of methamphetamine in a black box on the car's floorboard, for a total of 34.15 grams of methamphetamine. The box also contained marijuana and valium. Conn had $1,126 in his pocket and a police radio under the driver's seat of his car.

The State charged Conn with dealing in a narcotic drug as a Class A felony; possession of a narcotic drug as a Class D felony; possession of paraphernalia as a Class A misdemeanor; and unlawful use of a police radio as a Class B misdemeanor. Conn filed a motion to suppress evidence discovered during the search of his car, which the trial court denied. The jury convicted Conn of all counts, and he appeals.

DISCUSSION AND DECISION

I. Admission of Evidence

A trial court has broad discretion in ruling on the admissibility of evidence.

[4] *See* IC 35-44-3-12.

Washington v. State, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). We will reverse the trial court's ruling on the admissibility of evidence only when it constitutes an abuse of discretion. *Id.* A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

Conn argues that the trial court abused its discretion in admitting into evidence items found during the search of his car because the search violated his rights under Article I, Section 11 of the Indiana Constitution, which provides as follows:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

In determining whether a search or seizure violated a defendant's rights under the Indiana Constitution, we focus on the actions of the police officer and will conclude that the search is legitimate where it was reasonable given the totality of the circumstances. *Redden v. State*, 850 N.E.2d 451, 460 (Ind. Ct. App. 2006), *trans. denied*. We will consider the following factors in assessing reasonableness: 1) the degree of concern, suspicion, or knowledge that a violation has occurred; 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities; and 3) the extent of law enforcement needs. *Id.* at 460-61.

Here, Conn concedes that Trooper Wuestefeld properly stopped him for failing to wear his seatbelt. *See* IC 9-19-10-2; *State v. Harris*, 702 N.E.2d 722, 726 (Ind. Ct. App. 1998) (stating that an officer may briefly detain a person whom the officer believes has committed an infraction). During the brief detention, Trooper Wuestefeld became concerned

for his safety when Conn and Calhoun refused to look at him, and Calhoun placed his hand between the console and the passenger's seat. Calhoun later reached under his seat as if he was hiding something or reaching for a gun. Trooper Wuestefeld also noticed a strange chemical odor emanating from Conn.

Further, when Trooper Wuestefeld saw the empty pen barrel with black residue in the front ashtray and, based upon his training and experience, identified it as an instrument used to smoke methamphetamine or cocaine, the trooper had probable cause to believe that Conn was committing the misdemeanor offense of possession of paraphernalia as a Class A misdemeanor in the officer's presence. *See* IC 35-48-4-8.3. An officer may arrest a person without an arrest warrant if the officer has probable cause to believe that the person is committing a misdemeanor offense in his presence. *See* IC 35-33-1-1(a)(4); *Haley v. State*, 696 N.E.2d 98, 104 (Ind. Ct. App. 1998), *trans. denied*. Further, it is well settled that as long as probable cause exists to make the arrest, the fact that a suspect was not formally placed under arrest at the time of the search incident thereto will not invalidate the search. *Van Pelt v. State*, 760 N.E.2d 218, 223 (Ind. Ct. App. 2001), *trans. denied*.

Based upon the totality of these circumstances, we conclude that the search in this case was legitimate and did not violate Conn's rights under the Indiana Constitution. Accordingly, the trial court did not err in admitting into evidence items found during the search.

II. Sufficiency of the Evidence

Conn also argues that there is insufficient evidence to support his conviction of dealing in a narcotic drug as a Class A felony because the testimony of Calhoun and Rehfues

was incredibly dubious.

In addressing a claim of insufficient evidence, an appellate court must consider only the probative evidence and reasonable inferences supporting the judgment, without weighing the evidence or assessing witness credibility, and determine whether a reasonable trier of fact could have found guilt beyond a reasonable doubt. *Jacobs v. State*, 802 N.E.2d 995, 998 (Ind. Ct. App. 2004). Under the incredible dubiosity rule, a reviewing court may impinge upon the fact-finder's responsibility to judge witness credibility when a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete lack of circumstantial evidence. *Id.*

Here, there is circumstantial evidence that Conn possessed methamphetamine with intent to deliver it. Specifically, Conn possessed 34.15 grams of cocaine as well as paraphernalia, $1,126 and a police radio. Possession of a large quantity of drugs, money, plastic bags, and other paraphernalia is circumstantial evidence of intent to deliver. *Wilson v. State*, 754 N.E.2d 950, 957 (Ind. Ct. App. 2001). Further, the more narcotics a person possesses, the stronger the inference that he intended to deliver it and not consume it personally. *Id.*

Because of the circumstantial evidence of Conn's guilt, the incredible dubiosity rule does not apply in this case. We find sufficient evidence to support Conn's conviction of dealing in a narcotic drug as a Class A felony.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.